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NOTIFICATION

No. 6638/LA4A/81. *Dated, Trivandrum, 20th July,* 1981.

The Oodupally Lands Enfranchisement Bill, 1981 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. R. PRASANNAN,
Secretary,
Legislative Assembly.

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Sixth Kerala Legislative Assembly

Bill No. 87

THE OODUPALLY LANDS ENFRANCHISEMENT BILL, 1981

A

BILL

to provide for the enfranchisement of Oodupally lands held by tenants and for matters incidental or ancillary thereto.

Preamble.—WHEREAS it is necessary to provide for the enfranchisement of Oodupally lands held by tenants and for matters incidental or ancillary thereto;

BE it enated in the Thirty-second year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Oodupally Lands Enfranchisement Act, 1981.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appointed day" means the day on which this Act comes into force;

(b) "basic tax" means the tax imposed under the provisions of the Kerala Land Tax Act, 1961 (13 of 1961);

(c) "contract rent" means the rent payable under the contract of tenancy;

(d) "fair rent" means the fair rent determined under section 5;

(e) "holding" means any parcel or parcels of Oodupally lands held by a tenant;

(f) "intermediary" means any person who, not being the Government, has an interest in Oodupally lands and is entitled, by reason of such interest, to possession thereof but has transferred such possession to any other person.

Explanation.—Where such a person has transferred possession only of a portion of the Oodupally land which he is so entitled to

possess, he shall be deemed to be an intermediary in respect of that portion;

(g) "landlord" means a person under whom a tenant holds Oodupally lands and includes the Government;

(h) "normal produce" in respect of any land means the produce which could be raised on that land if the rainfall and the seasons were of a normal character;

(i) "Oodupally lands" means lands generally known by that name situated in the Kunnathunadu, Alwaye, Moovattupuzha and Kanayannoor Taluks of Ernakulam District and the Mukundapuram Taluk of Trichur District which were originally owned by the former Government of Cochin and are now owned by the Government of Kerala as successor to the former Government of Cochin;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "rent" means whatever is lawfully payable in money or in kind or in both by a person permitted to have the use and occupation of any Oodupally lands to the person so permitting and includes michavaram, but does not include customary dues;

(l) "Settlement Officer" means the Settlement Officer appointed under section 19;

(m) "tenant" means a person who holds Oodupally lands on Kanom, Verumpattom, Adima, Anubhogam, Panayam or on any other tenure by whatever name called and includes his heirs, legal representatives and assigns;

(n) "to hold" means to be in possession of Oodupally lands;

(o) the expressions "customary dues", "michavaram" and "nilam" shall have the meanings respectively assigned to them in the Kerala Land Reforms Act, 1963 (1 of 1964).

3. *Exemptions.*—Nothing in this Act shall apply to—

(a) Oodupally lands to which the provisions of the Jenmikaram Payment (Abolition) Act, 1960 (3 of 1961), are applicable;

(b) Oodupally lands used on the appointed day for any Government or public purpose; and

(c) Oodupally lands resumed by the Government for default in the payment of rent and subsequently leased for cultivation for definite periods.

4. *Tenants to be proprietors.*—Notwithstanding anything contained in any law or contract, or in any judgment, decree or order of court, with effect on and from the appointed day,—

(a) every tenant shall, subject to the provisions of section 11, have full proprietorship in the Oodupally lands comprised in his holding and such right shall be heritable and alienable;

(b) except as provided in section 12 no tenant shall be liable to pay any rent in respect of his holding.

5. *Determination of fair rent.*—(1) The fair rent in respect of a holding shall be determined by the Settlement Officer in accordance with the provisions of sub-section (2).

(2) The fair rent shalll be,—

(a) in the case of nilam, fifty per cent of the contract rent;

(b) in the case of other lands, seventy-five per cent of the contract rent.

Explanation I.—Where in the case of a holding consisting of nilam and lands other than nilam, the rent for the nilam and the other lands is not separately specified in the contract of tenancy, the contract rent for the purposes of this sub-section in respect of the nilam and the other lands shall be determined on the basis of the normal produce from the nilam and the normal produce from the lands other than nilam.

Explanation II.—For the purposes of this section, "nilam" includes a nilam converted into garden by the tenant's labour.

6. *Compensation payable by tenant.*—(1) In consideration of the conferment of full propcrietary rights in the Oodupally lands held by him, the tenant shall be liable to pay to the Government compensation which shall be equal to sixteen times the fair rent of such land.

(2) The compensation payable under sub-section (1) shall be paid in sixteen equal annual instalments:

Provided that it shall be open to the tenant to pay the compensation in a lump, in which case the amount payable shall be only seventy-five per cent of the compensation:

Provided further that the tenant shall exercise the option within three months from the appointed day and such option shall be final.

(3) The compensation payable under this section shall be paid to the Settlement Officer in such manner as may be prescribed.

(4) Where the compensation is paid in instalments, the first instalment thereof shall be paid on such date as the Government may by

notification in the Gazettee, specify and the second and subsequent instalments shall be paid within such time as may be prescribed.

(5) Where the compensation or any instalment thereof is not paid on the due date, the amount in default shall bear interest at the rate of six per cent per annum from that date till the date of payment of the compensation or instalment thereof, as the case may be.

(6) Nothing contained in sub-section (4) shall be deemed to preclude a tenant from paying at any time a larger sum than the amount of instalment, or from paying two or more instalments together.

(7) If any sum in excess of any instalment is paid by the tenant, it shall be credited to the succeeding instalment or instalments.

7. *Apportionment of compensation.*—(1) The compensation paid by the tenant shall be paid to the Government, or apportioned among the Government and intermediaries, as the case may be, in accordance with the provisions of sub-sections (2) and (3).

(2) Where there is no intermediary, the Government shall be entitled to the entire amount of compensation.

(3) Where there is an intermediary or there are intermediaries, the amount of sixteen times the fair rent paid by the tenant shall be apportioned among the Government and the intermediary or intermediaries, as the case may be, in proportion to the profits derived by them from the holding.

Explanation.—"Profits derived from the holding" shall, for the purposes of this sub-section, mean, in the case of the Government, the rent to which they are entitled and, in the case of an intermediary, the difference between the rent due to him from his tenant and the rent for which the intermediary is liable to his landlord and where there is no evidence as to the rent for which the intermediary is liable to his landlord, it shall be presumed that such rent is one-half of the rent payable to the intermediary by his tenant.

8. *Compensation how fixed in certain cases.*—When a holding is divided for any reason or when a holding consists of several plots and the rent for each such portion or plot is not fixed or payable, the compensation in respect of each such portion or plot shall be fixed in the proportion of the basic tax for such portion or plot, as the case may be, and the compensation so fixed shall be the compensation due thereon.

9. *Commutation rate.*—Where the rent in respect of a land comprised in a holding or part thereof is fixed in paddy, such rent shall, for the purposes of this Act, be commuted into money at the rate of two rupees and twelve paise per standard para of paddy.

Explanation.—For the purposes of this section, "standard para" means the measure equivalent to 13.11 litres.

10. *Compensation to be first charge.*—The compensation payable by a tenant under section 6 shall be a first charge upon the land in respect of which such compensation is payable, subject only to the charge for any tax or cess payable to the Government.

11. *Liability to pay basic tax.*—With effect on and from the appointed day, every tenant shall be liable to pay basic tax to the Government for the land comprised in his holding and the provisions of the Kerala Land Tax Act, 1961 (13 of 1961) shall apply to the levy and collection of such tax.

12. *Discharge of arrears.*—(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any contract, or in any judgement, decree or order of court, the Tahsildar of the taluk in which a holding is situate shall be entitled to collect the arrears of rent and any interest payable thereon, outstanding in respect of that holding on the appointed day, as if this Act had not been passed:

Provided that no tenant shall be liable to pay arrears of rent for more than six years:

Provided further that if a tenant pays—

(a) fifty per cent of the arrears of rent payable by him within three months from the appointed day; or

(b) seventy-five per cent of the arrears of rent payable by him within six months from the appointed day, all arrears of rent shall be deemed to be fully discharged.

(2) Arrears of rent which remain upaid after the expiry of one year from the appointed day shall bear interest at the rate of six per cent per annum.

13. *Settlement Officer to issue notice and determine Compensation.*—(1) As soon as may be after the appointed day, the Settlement Officer shall publish or cause to be published a public notice calling upon—

(a) the tenant;

(b) the intermediary or intermediaries; and

(c) all other persons interested in the Oodupally land the full proprietorship of which has vested in the tenant under section 4,

to appear before the Settlement Officer and to prefer claims and objections,

if any, on such date as may be specified in the notice with all relevant records to prove their respective claims or in support of their objections.

(2) The public notice under sub-section (1) shall be in such form and shall be published in such manner as may be prescribed.

(3) The Settlement Officer shall issue individual notice to the tenants, intermediaries and other interested persons referred to in sub-section (1) so far as known to him, calling upon them to appear before the Settlement Officer and to prefer claims and objections, if any, on such date as may be specified in the notice, with all relevant records to prove their respective claims or in support of their objections.

(4) Notwithstanding anything contained in sub-section (3), the publication of the notice in the manner referred to in sub-section (2), shall be deemed to be sufficient notice to the tenants, intermediaries and all other persons interested in the Oodupally lands.

(5) The Settlement Officer, after considering the claims and objections received in pursuance of the notice issued under sub-section (1) or sub-section (3), and after hearing any person appearing in pursuance of the said notice and after making due enquiries, shall pass an order specifying—

(a) the extent, survey number and such other particulars as may be prescribed of the Oodupally land, the proprietorship of which has vested in the tenant under section 4;

(b) the amount of compensation payable by the tenant under section 6;

(c) the amount of compensation payable to the Government;

(d) the amount of compensation due to the intermediary or intermediaries, if any;

(e) the value of encumbrances and the persons to whom the sale shall be payable; and

(f) such other particulars as may be prescribed.

14. *Payment of amount to the intermediaries and holders of encumbrances to be full discharge.*—The payment of amounts as determined under section 13 to the intermediary or the intermediaries and the holders of encumbrances shall be full discharge of the liability of the Government for payment of such amounts and no further claims for payment of any amount to them shall lie against the Government:

Provided that nothing contained in this section shall affect the liability of any person who may receive the whole or any part of the amount of compensation or the value of encumbrances to pay the same to the persons lawfully entitled thereto.

15. *Issue of Pattas and other documents to tenants.*—(1) As soon as may be after the order of the Settlement Officer under section 13 has become final, the Settlement Officer shall issue pattas or other documents evidencing full proprietory rights of the tenants in their holdings.

(2) The pattas or other documents issued under sub-section (1) shall contain such particulars as may be prescribed.

16. *Amounts due to the Government to be recoverable under the Revenue Recovery Act.*—All amounts due to the Government under this Act from any tenant, as arrears of compensation or otherwise, shall be a first charge on his holding and the same shall be recoverable as arrears of public revenue due on land under the provisions of the Kerala Revenue Recovery Act, 1968 (15 of 1968).

17. *Orders of Settlement Officer to be deemed to be decrees of Civil Court.*—(1) Any order of the Settlement Officer under section 13 shall be deemed to be a decree of a civil court and shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.

(2) Notwithstanding anything contained in any law, any person aggrieved by an order of the Settlement Officer may appeal within thirty days of the receipt by him of the order, to the District Court having jurisdiction over the area in which the holding is situate, and the order of the District court on such appeal shall be final.

18. *Corrections to final order of Settlement Officer.*—No correction shall be made in any order of the Settlement Officer after it has become final, provided that the Settlement Officer may, either of his own motion or on application filed by a person interested, correct any clerical or artihmetical mistake or any error arising therein from any accidental slip or omission:

Provided that no such correction shall be made without giving an opportunity of being heard to the party who may be affected thereby.

19. *Settlemint Officer.*—The Government shall appoint a Settlement Officer or as many Settlement Officers as may be necessary, from among officers not below the rank of Tahsildars for the purpose of exercising the powers and performing the functions of the Settlement Officer under this Act.

20. *Settlement Officer to have certain powers of Civil Court.*—The Settlement Officer shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or for local investigation;

(e) requisitioning any public record or copy thereof from any court or office; and

(f) any other matter which may be prescribed.

21. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or any officer for any act which is in good faith done or intended to be done under this Act or the rules made thereunder.

22. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette make such provisions not inconsistent with the provisions of this Act which appears to them necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date on which this Act comes into force.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Legislative Assembly.

23. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the fees payable on applications, appeals and claims made under this Act and the persons by whom and the period within which such fees shall be paid;

(b) the procedure to be followed by the Settlement Officer;

(c) any other matter which under this Act is to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a period of fourteen days which may be comprised is one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Certain lands which were owned by the former Government of Cochin and known by the name "Oodupally lands" are now owned by the Government of Kerala as the successor to the Government of Cochin. These lands are situated in the Kunnathunadu, Alwaye, Muvattupuzha and Kanayannur Taluks of Ernakulam District and Mukundapuram Taluk of Trichur District which were areas comprised in the former State of Travancore. These lands were extra-territorial lands so far as the Cochin State was concerned and were subject to the laws relating to the lands then prevailing in the former State of Travancore. The Cochin Government was considered to be in the position of a private jenmi (landlord) paying land revenue to the former State of Travancore. The approximate extent of the Oodupally lands is 793.67 acres.

2. The Government of Cochin granted these lands for cultivation to certain persons after executing different kinds of lease deeds, such as Kanom, Verumpattom, Adima, Anubhogam, Panayam, etc. Persons who obtained such lands under leases from the Government of Cochin had subsequently sub-leased them and, therefore, there are also intermediaries having interest in these lands. With the integration of Travancore and Cochin States in 1949, the payment of land revenue to the Government had been discontinued by an executive order of the former Government of Travancore-Cochin.

3. According to article 203 of the Cochin Land Revenue Manual, the position of the Cochin Sirkar in respect of Oodupally lands was only that of a jenmi or a private landlord. As the rights of the jenmi (Cochin Government) had passed on to the Government of Kerala, it is considered that these lands do not come under the tenancy provisions of the Kerala Land Reforms Act in view of the provisions of section 3 of Chapter II of the Kerala Land Reforms Act, 1963 (1 of 1964) which *inter alia* exempts leases of Government lands from the provisions of that Chapter. Due to the peculiar position of these lands, it is considered that these lands do not also fall under the purview of the Kerala Government Land Assignment Act, 1960 (30 of 1960)

4. It is considered necessary in the public interest to enfranchise these lands and to confer full proprietary rights on the holders thereof by enacting a separate piece of legislation.

5. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

Clause 19 of the Bill seeks to provide for the appointment of a Settlement Officer or as many Settlement Officers as may be necessary, from among officers not below the rank of Tahsildars for implementing the provisions of the Act. A special staff is also required to assist the Settlement Officer. The annual expenditure on account of the appointment of officers and staff for the

implementation of the Act is estimated to be Rs. 1.67 lakhs. It is expected that the expenditure will have to be incurred for a period of two years.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 1 of the Bill seeks to empower the Government to bring the Act into force on a date to be notified in the Gazette.

2. Sub-clause (3) of clause 6 seeks to empower the Government to make rules laying down the manner in which compensation shall be paid by the tenants to the Settlement Officer. Sub-clause (4) of that clause seeks to empower the Government to specify by notification in the Gazette, the date on which the first instalment of the compensation shall be paid by the tenant and also to prescribe the time within which the second and subsequent instalments shall be paid.

3. Sub-clause (2) of clause 13 seeks to empower the Government to prescribe the form of the public notice referred to in sub-clause (1) of that clause and the manner in which it is to be publised. Sub-clause (5) of that clause seeks to empower the Government to prescribe the particulars to be contained in the order of the Settlement Officer in addition to the matters specified in the clause.

4. Sub-clause (2) of clause 15 seeks to empower the Government to prescribe the particulars to be contained in pattas or other documents evidencing full proprietary rights of the tenants in their holdings.

5. Clause 19 seeks to empower the Government to appoint Settlement Officers for the purpose of exercising the powers and performing the functions of the Settlement Officer under the Act.

6. Clause 20 seeks to empower the Government to prescribe any matter, besides those specified in the clause, in respect of which the Settlement Officer shall have the powers of a civil court.

7. Clause 22 seeks to empower the Government to make provisions, by order published in the Gazettee, for the removal of difficulties that may arise in giving effect to the provisions of the Act. The clause also seeks to provide that no such order shall be made after the expiry of two years from the date of commencement of the Act.

8. Clause 23 seeks to empower the Government to make rules, to carry out the purposes of the Act. Such rules may provide for the fees payable on applications, appeals and claims made under the Act and the persons by whom and the period within which such fees shall be paid, the procedure to be followed by the Settlement Officer and any other matter which is to be or may be prescribed under the Act.

9. The matters mentioned above are of an administrative or routine nature and therefore the delegation of legislative power is of a normal character.

P. S. SREENIVASAN